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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/553,300	10/14/2005	Gerhard Meixner	3473	1889

7590  
Striker Striker & Stenby  
103 East Neck Road  
Huntington, NY 11743

02/21/2008

EXAMINER
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NASH, BRIAN D

ART UNIT	PAPER NUMBER
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3721

MAIL DATE	DELIVERY MODE
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02/21/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/553,300	<b>Applicant(s)</b> MEIXNER ET AL. <span style="float: right;">CT</span>	
	<b>Examiner</b> Brian Nash	<b>Art Unit</b> 3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 December 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 9-21 is/are pending in the application.
- 4a) Of the above claim(s) 17-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 9-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 October 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                 | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                        | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Examiner's Comments***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/3/2007 has been entered. The pending claims are now 9-21.

### ***Election/Restrictions***

2. Newly submitted claims 17-21 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Claims 17 and 18 by themselves would be okay, but since applicant has claimed dependent claims 19-21 in the alternative, all new claims 17-21 have been included in this restriction requirement. Specifically, claims 19-21 include subject matter that was not part of original claims 1-8 nor in amended claims 9-16 in the prosecution history and such subject matter requires a different scope of search in the prior art.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 17-21 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 16 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 16, the term "and/or" renders the claim indefinite because it is not certain what limitations are encompassed by the claim. Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claim 9 is rejected under 35 U.S.C. 102(b) as being anticipated by GB 2285007A to Muetschele et al. Muetschele et al show the same percussion mechanism for a hammering tool:

With respect to claim 1, a striker (17) axially displaceable in a guide barrel (15), a percussion mechanism (16) that exerts pressure on the striker such that the striker moves forward in the direction of a tool bit (25), a blocking element (47,48 – see Figs. 2,5) capable of blocking the striker (17) in its forward motion and the striking frequency of the percussion mechanism is capable of being adjusted by controlling the time of which the blocking element prevents forward movement of the striker. The Examiner notes that the striker (17) imparts impacts directly to an end section of the tool bit (25) via intermediate punch (19) and that tool would not function properly without such a direct imparting of the impact force from the striker (17), i.e. an impacting hammer drill needs to have a direct imparting of the impacting forces whether intermediate anvils or punches are present.

7. Claims 9-12 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by US 6,675,908 to Frauhammer et al. Frauhammer et al show the same percussion mechanism for a hammering tool:

With respect to claim 9, a percussion mechanism (12) that is axially displaceable in a guide barrel (13) includes a striker (17), a device (16) that exerts pressure on the striker, a tool bit (not shown) that is insertable into the hand tool (10) of the percussion mechanism, a blocking element (23,31) that is capable of blocking the striker in its forward motion and wherein the striking frequency of the striker is capable of being adjusted by changing the time of that the blocking element (13) prevents forward motion of the striker. The Examiner notes that the striker (17) imparts impacts directly to an end section of the tool bit (not shown) via intermediate punch (18) and that tool would not function properly without

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such a direct imparting of the impact force from the striker (17), i.e. an impacting hammer drill needs to have a direct imparting of the impacting forces whether intermediate anvils or punches are present.

With respect to claim 10, a pressure reservoir (25) that is fillable with a gas and located on a side of the striker diametrically opposite the tool bit holder (20).

With respect to claims 11 and 15, air is delivered into and out of the pressure reservoir (25) via valve (26). The pressure reservoir is sealed via (15) covering (26) thereby increasing the pressure within the reservoir and gas pressure is also released when valve (26) is uncovered and the pressurized gas exits.

With respect to claim 12, the amount of gas delivered to the reservoir (25) through valve (26) is capable of being controlled.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claim 9 is alternatively rejected under 35 U.S.C. 103(a) as being unpatentable over GB 2285007A to Muetschele et al in view of US 2002/0050365 to Bongers-Ambrosious et al. In the event that applicant intended for and amends claim 9 to structurally limit the percussion mechanism such that the striker (2) itself directly contacts the tool bit (4) without any intermediary parts then the Examiner takes the position that Muetschele et al disclose the invention substantially as claimed, as discussed above, but show an impacting element (19) that is intermediate element the striker and the tool bit. Bongers-Ambrosious et al show a hammer drill well known in the art to have direct contact between the striking mechanism and the tool bit. It would have been obvious to one skilled in the art to configure/modify the tool of

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Muetschele et al in order to remove the intermediate punch (19), since such a modification is within the engineering purview of the skilled artisan concerned with making a more compact power hand tool.

10. Claims 13-14 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,675,908 to Frauhammer et al. Frauhammer et al show the invention substantially as claimed; however,

With respect to claims 13 and 14, Frauhammer et al do not explicitly show or mention a pump device for delivering gas to the pressure reservoir. However, it is well known and common in the art hand held power tools to operate either with an external air source or an internal pump located within the tool. It would have been obvious to one skilled in the art to configure/modify the tool of Frauhammer et al in order to include its own pump device for supplying gas to the pressure reservoir since such a modification is within the engineering purview of the skilled artisan concerned with providing a mobile and cordless power tool.

With respect to claim 16, insofar as the invention is understood, it is reasonable to conclude that blocking time of the blocking member controllable as a function of a user-selectable striking frequency. The user operates the hammer tool via a trigger mechanism which either directly controls the amount of gas pumped into the pressure reservoir or controls the operation of a motor that operates the piston (16) that pressurizes the gas in the pressure reservoir. The blocking element (23,31) operates in response to the frequency of the striker (17) thereby making the blocking time a function of the user selection.

### ***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Refer to attachment (PTO-892) for notice of references cited and recommended for consideration based on their disclosure of limitations of the claimed invention.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Nash whose telephone number is 571-272-4465. The examiner can normally be reached on Monday – Thursday from 8 a.m. to 6 p.m.

13. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached at 571-272-4467. The official fax number for this Group is: 571-273-8300

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14. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Brian D. Nash/  
Primary Examiner, Art Unit 3721

2/15/2008